IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0267

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL SCHEFFERT,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE JOSEPH MOOTHART, JUDGE

# APPELLEE'S BRIEF

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## ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

## STATEMENT OF THE CASE

### Nature of the Case

The defendant, Michael Scheffert, appeals his conviction for possession of marijuana, second offense, a serious misdemeanor in violation of Iowa Code section 124.401(5) (2013). The defendant was convicted following a trial on the minutes in the Black Hawk County District Court, the Hon. James D. Coil presiding.

### Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

### Facts

At 12:37 a.m., a deputy sheriff stopped the defendant's vehicle at Falls Access on Beaver Road in rural Black Hawk County. Hrg. tr. p. 11, lines 5–17. Falls Access is a "county conservation property" where the public can hunt and fish. Hrg. tr. p. 14, lines 4–9. Beaver Valley Road is unpaved and maintained by the County Conservation Board. *See* hrg. tr. p. 12, lines 15–22.

The public is only permitted to use county parks or conservation areas during certain hours. Hrg. tr. p. 14, lines 4–15. In Black Hawk County, the public is allowed from 6:00 a.m. until 10:30 p.m. Hrg. trp. 14, lines 16–23.[1] At the time of the traffic stop, the area was closed to the public. Hrg. tr. p. 14, line 24 — p. 15, line 3. Beaver Valley Road is a "dead end" and the only possible destination is the Falls Access area. *See* hrg. tr. p. 16, lines 8–20.

Deputies stopped the defendant because his vehicle was in the park after hours. Hrg. tr. p. 17, lines 4–7. Once stopped, the defendant or his passenger told deputies they were in the park area "to go frogging." Suppression Ruling, p. 1; App. 7. Following a consent search, police found suspected marijuana. *See* bench trial tr. p. 5, line 18 — p. 6, line 5. The defendant admitted both that the substance was his and that he knew it was marijuana. *See* bench trial tr. p. 5, line 18 — p. 6, line 5.

[1] It was disputed at the suppression hearing whether there was adequate signage. Hrg. tr. p. 17, line 24 — p. 18, line 10; Suppression Ruling, p. 1; App. 7. As discussed in the argument section, this fact is not material to the reasonable-suspicion analysis.

## ARGUMENT

### I. The Deputy Had Reasonable Suspicion to Stop the Defendant Because He Observed the Defendant Driving into a County Park After the Park Closed.

**Preservation of Error**

The defendant did not preserve any claim under the state constitution. He made no substantive argument below concerning the Iowa Constitution and his "mere citation" to Article I, section 8 was insufficient to preserve error. *See State v. Lowe*, 812 N.W.2d 554, 566 (Iowa 2012) (citing and quoting a non-precedential opinion , *see* Iowa Code section 602.4107). And even if the defendant did raise the issue adequately, he failed to obtain a ruling. In the words of the Supreme Court:

> It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.

*Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). There is nothing to suggest the district court ever implicitly considered a state-constitution claim and no argument at the suppression hearing touched on any provision of the Iowa Constitution. *Compare*

*Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). Error was only preserved as to the Fourth Amendment.

**Waiver**

Even if the defendant did arguably preserve a state-constitution claim, he has waived it for failure to brief the issue on appeal. His brief never cites to a provision of the Iowa Constitution nor does he conduct any analysis of the relevant legal questions under the Iowa Constitution. *See generally* Defendant's Proof Br. The only point at which the defendant even tacitly acknowledges the existence of a state constitution is made in the last sentence of the conclusion, bereft of any citation, legal authority, or coherent claim. *See* Defendant's Proof Br. at 12 ("The stop is unconstitutional under Iowa and Federal constitutions."). This does not present any viable claim for this Court to review. Iowa R. App. P. 6.903(2)(g)(3).

This failure to brief a claim under the Iowa Constitution is compounded by the defendant's failure to cite any cases in the analysis portion of his argument section. *See* Defendant's Proof Br. at 10–12. To the extent the defendant intended to argue anything other than general Fourth Amendment principles, the State has not been adequately advised of his claims to marshal a response. The law does

not permit the defendant to conscript this Court into conducting his legal research for him. *See, e.g.*, *In Re Det. of West,* 2013 WL 988815, at *3 (Iowa Ct. App. 2013( ("A skeletal argument, really nothing more than an assertion, does not preserve a claim … Judges are not like pigs, hunting for truffles buried in briefs." (internal citation and quotation omitted)); *King v. State*, 818 N.W.2d 1, 48 (Iowa 2012) (Wiggins, J., dissenting) ("Our law clerks and judges should not be doing the work of counsel…"); *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."). Any claim under a provision of the Iowa Constitution is waived.

**Standard of Review**

Constitutional claims, including those that arise under the Fourth Amendment, are reviewed de novo. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).

If the Court concludes the defendant did not waive a state-constitution claim, this Court will nonetheless apply federal standards, because the defendant has not proposed a different

standard for evaluating the issue under the Iowa Constitution. *State v. Tyler*, 830 N.W.2d 288, 292 (Iowa 2013)

**Merits**

To conduct a traffic stop under the Fourth Amendment, "officers need only reasonable suspicion—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law."[2] *Heien v. N. Carolina*, 135 S. Ct. 530, 536 (2014) (internal citation and quotations marks omitted).

A deputy sheriff observed the defendant driving on a dead-end road into the Falls Access county park. *See* Suppression Ruling, p. 1; App. 7. The park's hours were 6:00 a.m. to 10:30 p.m. and the public is not permitted in the park after hours. *See* Suppression Ruling, p. 1; App. 7. Being in the park after these hours is a crime. *See* Iowa Code §§ 416A.46, 350.5, 805.8b(6)(b) (2013). The stop occurred at 12:37 a.m. *See* hrg. tr. p. 11, lines 5–12.[3] Based on this information, the

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[2] To the extent the defendant on appeal or the parties below allege probable cause is required for an investigatory traffic stop, they are mistaken. *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968); *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997).

[3] There seems to be a scrivener's error in the suppression ruling. It indicates the stop occurred at 2:37 a.m., while the testimony at the hearing established the time was 12:37 a.m. *Compare* Suppression Order, p. 1; App. 7, *with* hrg. tr. p. 11, lines 5–7. This discrepancy is

deputy "had specific and articulable facts, which taken together with rational inferences from those facts, [led him] to reasonably believe criminal activity may have occurred" or was occurring, and the stop was constitutional. *See State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). To the extent this Court concludes the officer did need probable cause to conduct the stop, these same facts give rise to a fair probability that a crime had been committed and was likely ongoing while the defendant remained in the park after hours.

The defendant complains on appeal that the stop was improper because the State did not prove there was adequate signage or put the County Conservation Board's regulations into the record. *See* Defendant's Proof Br. at 4–12; *see* Iowa Code § 350.5 (2013) (providing a penalty for violating county conservation regulations). These might be interesting arguments if the defendant was appealing the sufficiency of the evidence for an after-hours-use ticket. But that is not the question on appeal. The burden of proof for an investigatory stop is less than that for conviction (beyond a reasonable doubt), civil liability (preponderance of the evidence), or even an arrest (probable cause): the State is only required to establish

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not material because both times are well past the park closing time of 10:30 p.m. *See* Suppression Ruling, p. 1; App. 7.

a reasonable suspicion of criminal activity. *See, e.g., State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997); *State v. Richardson*, 501 N.W.2d 495, 496–97 (Iowa 1993); *accord Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). As the defendant concedes, the officer testified that the park's closing time was 10:30 p.m. Defendant's Proof Br. at 10. This testimony was uncontroverted. *See generally* hrg. tr. The deputy's observation of the defendant easily crosses the threshold of reasonable suspicion.

To the extent the defendant asserts the officer was mistaken as to the law or the facts, either mistake is permissible under the Fourth Amendment, so long as it reasonable. *Heien*, 135 S. Ct. at 536 (mistake of law); *Illinois v. Rodriguez*, 497 U.S. 177, 183–186 (1990) (mistake of fact); *Hill v. California*, 401 U.S. 797, 802–805 (1971) (same). The defendant has not identified any aspect of the officer's perception regarding criminal activity that involved an unreasonable mistake and the record supports that an officer of reasonable caution would have believed criminal activity was afoot. *See* Suppression Order, pp. 2–3; App. 8–9. To the extent the officer may have been mistaken as to the exact contours of the Code sections or the facts that night, this does not require the suppression of the marijuana

seized following a search of the defendant. *Heien*, 135 S. Ct. at 536; *Rodriguez*, 497 U.S. at 183–186; *Hill*, 401 U.S. at 802–805.

Finally, to the extent the defendant levies some sort of challenge to the imposition of a park-closing time absent signage, that claim is without merit and cannot be heard. *See* Defendant's Proof Br. at 10–11. To the extent any argument can be discerned, the defendant seems to say that, because the Code requires speed-limit signs, it should also require park-closure signs. *See* Defendant's Proof Br. at 10–11. The plain language of the statute, when made applicable to county parks, provides that the presumptive closing time for parks is 10:30 p.m., and signs are only required if the park deviates from that presumption. *See* Iowa Code § 461A.46 (2013) ("… [A]ll persons shall vacate state parks and preserves before ten-thirty o'clock p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions."). There is no legal basis to read the speed-limit provisions into the section about park closures. And even if there were, this is not the case to present the question—our issue is reasonable suspicion, not what elements must be proven to constitute a conviction beyond a reasonable doubt.

## CONCLUSION

This Court should affirm the defendant's conviction.

## REQUEST FOR NONORAL SUBMISSION

This case can be decided on the briefs.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

    - This brief contains **1,925** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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